1: 1 Phil. 254

[G.R. No. 428. April 30, 1902]

JOSE ZULUETA, PLAINTIFF AND APPELLEE, VS. FRANCISCA ZULUETA, DEFENDANT AND APPELLANT.

D E C I S I O N

LADD, J.:

Don Jose Zulueta and his sister, Doña Francisca Zulueta, are sole heirs under the will of their father, Don Clemente Zulueta, who died in Iloilo in 1900. In the course of the voluntary testamentary proceedings instituted in the Court of First Instance of Iloilo by Don Jose, three auditors were appointed to make a division of the estate under article 1053 of the *Ley de Enjuiciamiento Civil,* of whom Don Jose and Doña Francisca each nominated one, the third or auditor umpire being chosen by common accord of the parties. The two auditors nominated by the parties respectively failed to agree, and each rendered a separate report. The auditor umpire, whose report was filed March 29,1901, agreed with and accepted in its entirety the report of the auditor nominated by Don Jose. The procedure marked out in articles 1062 and 1067 of the *Ley de Enjuiciamiento Civil* was then followed, and upon the application of Dona Francisca the record was on April 13 delivered to her for examination. April 25 she filed her opposition to the report of the auditor umpire, and a meeting of the interested parties having been had, as provided in article 1069 of the *Ley de Enjuiciamiento Civil*, and no agreement having been reached, the court, by a *providencia* of May 4, directed that the procedure prescribed for declarative actions be followed, and that the record be again delivered to Dona Francisca in order that she might formulate her demand in accordance with article 1071 of the *Ley de Enjuiciamiento Civil.* On petition of Don Jose the court by a *providencia*, of May 7 fixed the term of fifteen days as that within which Dona Francisca should formulate her demand, which term was subsequently enlarged seven days on petition of Dona Francisca. June 5 Doff a Francisca petitioned the court, stating that the new Code of Procedure enacted by the Civil Commission was soon to become operative, and that she deemed it more advantageous to her rights that the declarative action which she

had to bring should be governed by the new Code rather than that then in force, and asking that proceedings in the action should be suspended till the new Code went into effect. This petition the court denied in an *auto* rendered June 15, declaring, furthermore, that the term fixed for the filing of the demand having expired, Dona Francisca had lost her right to institute the action. June 22 Dona Francisca petitioned for the reform of this *auto.* On the same day this petition was denied in an *auto* rendered by Don Cirilo Mapa, a justice of the peace of the city of Iloilo, who had been designated, as would appear from the record, by the judge of the then recently constituted Ninth Judicial District to preside in the Court of First Instance of the Province of Iloilo during the illness of the latter. The denial of this petition was put on the ground that the *auto* of June 15 was not one against which the remedy of reform was available, but that the remedy was by way of appeal under article 365 of the *Ley de Enjuiciamiento Civil.* On June 29 Dona Francisca interposed an appeal against the *auto* of June 22, which the court, now presided over by the regular judge of first instance of the district, declined to admit, on the ground that it was not presented within three days, as prescribed in article 363 of the *Ley de Enjuiciamiento Civil.* Thereupon, upon petition of Don Jose the partition proceedings were approved by the court by an *auto* of July 16 from which Dona Francisca took the present appeal.

While the appeal was pending in this court Doña Francisca presented a petition under Act No. 75 of the Civil Commission, alleging that the *auto* of June 22 was rendered through a mistake of the acting judge of first instance, who erroneously believed that he had jurisdiction to render the same; that Dona Francisca was prevented from entering an appeal from that *auto* by her mistake as to the term prescribed by the *Ley de Enjuiciamiento Civil* for entering appeals in such cases; and finally that the *auto* of July 16 approving the partition proceedings was rendered by a mistake of the judge, who erroneously believed that the *auto* of June 22 was valid, whereas it and all subsequent proceedings were absolutely void; and asking that the auto of June 22, the *providencia* denying the admission of the appeal, and the *auto* of July 16 be set aside and the proceedings restored to the condition in which they were previous to June 22, when the first mistake was made. Upon this petition a hearing has been had, and we have also heard arguments upon the appeal.

Taking up the petition first, we do not find it necessary to decide whether the acting judge of first instance by whom the *auto* of June 22 was rendered had such *de facto* authority that legal validity will be accorded to his acts. Assuming that he was without jurisdiction to render the *auto,* we are of opinion that Dona Francisca can not take advantage of the error in such a proceeding as the present. Act No. 75 provides a remedy "against judgments obtained in Courts of First Instance by fraud, accident, or mistake," but although the

language of the law is somewhat broad, the general scope and purpose of the enactment indicate too clearly to require argument that the mistake against which relief is provided can not be a mistake into which the court may have fallen in the findings of fact or conclusions of law upon which its judgment is based. If such were the effect of the enactment, every case in which a party felt himself aggrieved by the judgment of the court below could be brought to this court for revision in this way, and the ordinary remedy by appeal or otherwise would be thus entirely superseded by the more summary proceeding therein provided. "The meaning of the word 'mistake' as used in the statute does not extend – nor was it intended that it should – to an error of law which may have been committed by the judge in the trial in question. Such errors may be corrected by appeal. The statute under consideration can by no means be employed as a substitute for that remedy." (Jose Emeterio Guevara vs. Tuason & Company, decided October 7,1901, p. 27, *supra*.) The result is that we can not set aside the *auto* of June 22 on this petition, and that of July 16 stands upon precisely the same footing, the allegation being that that *auto* also was rendered under a mistake of law on the part of the judge.

The remaining question upon the petition is whether Dona Francisca is entitled to relief against the consequences of her failure to interpose, her appeal against the *auto* of June 22 within the period fixed by the law. The mistake in this instance was her own, but it was a mistake of law, and while we should be unwilling to say that special cases might not occur in which relief would be afforded in such a proceeding as this against a mistake of law made by a party, we are of opinion that the present is not such a case. Nothing is shown here except the bare fact that the party acted under ignorance or misconception of the provisions of the law in regard to the time within which the appeal could be taken, and there is no reason why the general principle, a principle "founded not only on expediency and policy but on necessity," that "ignorance of the law does not excuse from compliance therewith" (Civil Code, art. 2), should be relaxed. The framers of Act No. 75 could not have intended to totally abrogate this principle with reference to the class of cases covered by the act. If such were the effect of this legislation the court "would be involved and perplexed with questions incapable of any just solution and embarrassed by inquiries almost interminable."

Act No. 75 was framed for the purpose of preventing injustice, and although the legal construction to be placed upon its provisions can not of course be affected by any considerations as to the hardships of the particular case in which it is invoked, it is proper to say that if the question determined in the *auto* of June 15, which is that against the consequences of which the petitioner seeks ultimately to be relieved, were to be decided upon its merits, that *auto* would necessarily be sustained, so that the petitioner has in fact

suffered no hardship or injustice by reason of the *auto* having been left in effect as a result of the mistakes which she claims to have vitiated the subsequent proceedings.

The petition for the suspension of the declarative action till the new Code went into effect was totally without merit. No reason was alleged in the petition itself why the suspension should be granted other than the mere convenience of the party, and none has been suggested on the argument. The petitipn could not in any possible view that occurs to us have been granted. With reference to the declaration in the *auto*that the plaintiff had lost her right to file her demand in the declarative action, it may be said that this declaration followed as a necessary consequence from the *providencia* of May 7, fixing the time within which the demand must be formulated, and the subsequent providencia enlarging the period, from neither of which *providencias* had any appeal or other remedy been attempted by Dona Prancisca. But going back to what may be called the fundamental question of the right of the court to fix a definite term within which the declarative action must be instituted, we are of opinion that such right clearly existed, and that the *providencia* of May 7 was in exact conformity with the procedure prescribed by article 1071 of the *Ley de Enjuiciamiento Civil*. It might be claimed with much reason that if the parties interested in the partition of the estate failed to agree on that made by the auditor, either should be allowed to institute a declarative action against the other for the purpose of settling the dispute within such time as he might think proper, the property remaining in the meantime undivided, were it not that the law in language of unmistakable import prescribes a different rule of procedure. Article 1071 of the *Ley de Enjuiciamiento Civil* is as follows: “If no agreement is had, the procedure prescribed for declarative actions, according to the amount involved, shall be followed, and the delivery of the papers shall be first made to the parties who first requested delivery to them of the partition report as provided in article 1067.” Article 1067 is as follows: “If the interested parties, or any of them, request, within eight days, that the record of the proceedings and the report on partition be delivered to them for examination, the judge shall order said delivery for a period of fifteen days to each person making such request.” The law does not treat the partition proceedings as terminated by the failure of the parties to agree, but provides that “the case” shall in that event “be given the procedure of the declarative action” and goes on to designate the party who is to take the initiative in the pleadings, a provision utterly irreconcilable with the idea that it is optional for either party to commence the proceeding at his pleasure. And it then proceeds by reference to article 1067 to fix the time within which the proceeding is to be instituted. The petitioner had the benefit of that period and was accorded besides an extension of seven days, and has consequently had all the rights to which she was strictly entitled under the

law and something more. She hasj we think, no just ground to complain that she has been deprived of any substantial right either by her own mistake or that of the court below, in any possible view in which the facts of the case may be regarded.

What has been said with reference to the petition disposes also of the question involved in the appeal. If Dona Francisca had, as we think must be the case, lost her right to institute the declarative action, there was no other course for the court to take except to approve the partition proceedings, unless there was some defect which vitiated them, and none has been pointed out. It was suggested in the argument that the report of the auditor umpire was of prior date to that of the auditor nominated by Don Jose, and it was claimed that this rendered the proceedings defective. An examination of the record shows that the report of the auditor nominated by Don Jose was dated March 24 and filed March 29, and that that of the auditor umpire was dated March 28 and filed March 29. The contention of counsel on this point is therefore not supported by the facts.

The result is that the petition must be denied and the judgment appealed from affirmed, with costs to the appealing party both as to the petition and the appeal. So ordered.

Arellano, C. J., Torres, Cooper, and *Willard, JJ.,* concur.

Mapa, J., did not sit in this case.

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